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8 Attorneys for Defendant, COUNTY OF SAN BERNARDINO,
ROBERT VACCARI, and JAKE ADAMS

9 **UNITED STATES DISTRICT COURT**

10 **CENTRAL DISTRICT OF CALIFORNIA**

11 L.C., a minor by and through her
12 guardian *ad litem* Maria Cadena,
individually and as successor-in-interest
13 to Hector Puga; I.H., a minor by and
through his guardian *ad litem* Jasmine
14 Hernandez, individually and as
successor-in-interest to Hector Puga;
15 A.L., a minor by and through her
guardian *ad litem* Lydia Lopez,
16 individually and as successor-in-interest
to Hector Puga; and ANTONIA
17 SALAS UBALDO, individually,

18 Plaintiffs,

19 vs.

20 STATE OF CALIFORNIA; COUNTY
21 OF SAN BERNARDINO; S.S.C., a
nominal defendant; ISIAH KEE;
22 MICHAEL BLACKWOOD;
BERNARDO RUBALCAVA;
23 ROBERT VACCARI; JAKE ADAMS;
24 and DOES 6-10, inclusive,

25 Defendants.

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CASE NO. 5:22-cv-00949-KK-(SHKx)

*Assigned for All Purposes to:
Hon. Kenly K. Kato – Courtroom 1*

DISCOVERY MATTER

**DECLARATION OF ANITA K.
CLARKE, ESQ. IN SUPPORT OF
COUNTY DEFENDANTS' EX
PARTE APPLICATION TO
RECONSIDER MODIFYING
SCHEDULING ORDER TO
EXTEND DISCOVERY CUTOFF
TO TAKE SINGLE DEPOSITION;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION
OF ANITA K. CLARKE**

[Proposed Order lodged concurrently]

Trial Date: June 2, 2025

Complaint Filed: June 7, 2022

FAC Filed: October 18, 2022

SAC Filed: January 13, 2023

TAC Filed: May 12, 2023

DECLARATION OF ANITA K. CLARKE

I, Anita K. Clarke, do state and declare as follows:

1. I am an attorney at law duly licensed to practice before this Court and am an associate in the law firm of Lynberg & Watkins, P.C., attorneys of record for Defendants County of San Bernardino, ROBERT VACCARI, and JAKE ADAMS in the above-captioned matter. I have personal knowledge of the facts stated herein, except those stated upon information and belief, and as to those matters, I believe them to be true. If called upon to testify to the matters herein, I could and would competently do so.

2. On December 16, 2024, Defense deposed Plaintiff Annabelle Botten. During the deposition of Annabelle Botten, she stated that there was a video from a neighbor. She first viewed it in 2022 and believed she had a copy of the video. A true and accurate copy of the relevant portions of her transcript is attached hereto as Exhibit A. The video was later revealed to be the video from “Sal.”

3. Defense initially sent a deposition notice to Plaintiffs’ counsel to depose Annabelle Botten on October 18, 2024 for a deposition in November, however, she was not available until December. A true and correct copy of the initial deposition notice for November 18 and the amended deposition notice, noticing her deposition for December 16, 2024 is attached as Exhibit B.

4. On December 23, 2024, Plaintiffs for the first time produced a video, however, it was Defendants were initially not able to access the video due to the format it was in nor was the production accompanied by any information as to its original source. Defendants immediately followed up on December 26, 2024 requesting a new copy of the video with additional identifying information. This video we now know was captured by “Sal” that is in black and white, zooms in and out, and does not have synched audio. It appears to have been altered or manipulated. The video is bates stamped as PLTFS 00345 and is accessible by Windows Media

1 Player. A true and accurate copy of the video will be lodged in the clerk's office and
2 chambers as Exhibit C. Upon receipt of the video, defense counsel inquired who took
3 the video and Plaintiffs' counsel responded they are looking into it. A true and
4 accurate copy of the email correspondence sent by Plaintiffs' counsel producing the
5 video PLTFS 00345 and the following correspondence is attached hereto as Exhibit
6 D.

7 5. On December 31, 2024 at 3:37 p.m., Plaintiffs' counsel sent email
8 correspondence with a letter attached that identified "Sal (last name unknown)" as the
9 person whom the video PLTFS 00345 belongs to. This was the first time Plaintiffs
10 had disclosed who took the video. A true and correct copy of the email
11 correspondence and accompanying letter is attached hereto as Exhibit E.

12 6. The State Defendants filed their *ex parte* application at 7:02 a.m. on
13 December 31, 2024, prior to Plaintiffs' providing the name "Sal" as the person who
14 had the video, PLTFS 00345. A true and accurate copy of the ECF notification stating
15 the *ex parte* application was filed at 7:02 a.m. on December 31, 2024 is attached hereto
16 as Exhibit F.

17 7. County Defendants did not participate in the preparation of the State's
18 *ex parte* application that was filed on December 31, 2024 nor could it be anticipated,
19 the State would not address more fully the significant issues surrounding the video
20 that was provided on December 23, 2024, especially since the name of the person who
21 took the video had not yet been produced by Plaintiffs.

22 8. On January 8, 2025, as soon as the Court denied the State's *ex parte*
23 application to modify the scheduling order, Defense counsel contacted Plaintiffs'
24 counsel whether they would stipulate to the deposition of Sal, however, Plaintiffs'
25 counsel declined and the only reasoning was that the Court has already ruled and
26 Plaintiffs do not believe there are grounds for reconsideration. A true and accurate
27 copy of this email correspondence is attached hereto as Exhibit G.

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1 9. The only way to obtain the information as to how Sal's video was
2 created, on what system, from what angle, and whether its original owner made
3 modifications and how, is to depose Sal. Without this information, Defendants are
4 not able to properly assess the authenticity and evidentiary value of this piece of video
5 evidence that Plaintiffs intend to offer at trial.

6 10. The *Botten* matter was initially filed in the San Bernardino County
7 Superior Court, however, the parties agreed that any discovery served in the state
8 matter could be used in the federal action to avoid duplication. On January 19, 2023,
9 County Defendants served their first set of Request for Production of Documents on
10 each Plaintiff in *Botten, et al. v. County of San Bernardino, et al.*. These same
11 Requests were sent to Jonathan Botten Sr., Jonathan Botten Jr., Tonja Dudek-Botten,
12 and Annabelle Botten. On April 3, 2023, Plaintiffs in *Botten* responded to the
13 County's Request for Production of Documents, Set One all the same. Only one set
14 is attached of the requests and responses so as not to present voluminous and
15 duplicative documents to the Court. Attached hereto as Exhibit H is a true and
16 accurate copy of the first set of Request for Production that was served on Plaintiff
17 Jonathan Botten Sr. and his responses. None of these responses reference a video
18 taken by Sal.

19 11. On January 19, 2023, County Defendants served their first set of
20 Interrogatories on each Plaintiff in *Botten, et al. v. County of San Bernardino, et al.*
21 These same Interrogatories were sent to Jonathan Botten Sr., Jonathan Botten Jr.,
22 Tonja Dudek-Botten, and Annabelle Botten. On April 3, 2023, Plaintiffs in *Botten*
23 responded to the County's Interrogatories, Set One, all the same. Only one set is
24 attached of the requests and responses so as not to present voluminous and duplicative
25 documents to the Court. Attached hereto as Exhibit I is a true and accurate copy of
26 the first set of Interrogatories served on Plaintiff Jonathan Botten Sr. and his
27 responses. None of these responses reference a video taken by Sal.

1 12. In *L.C. et al. v. County of San Bernardino, et al.*, County Defendants
2 served their first set of Request for Production of Documents on March 24, 2023, and
3 Plaintiffs L.C., I.H., Ubaldo, and A.L. responded on June 23, 2023. Plaintiffs then
4 served supplemental responses on October 31, 2024 and December 31, 2024. The
5 requests, responses, and supplemental responses were all the same for each Plaintiff,
6 thus only one copy of the RPDs, responses, and second and third supplemental
7 responses are attached. Attached as Exhibit J is a true and accurate copy of the
8 Request for Production of Documents Set One served on Plaintiff L.C., and their
9 responses and supplemental responses from October 31, 2024 and December 31,
10 2024. The video from October 31, 2024 was from a neighbor Betzabeth Gonzalez.
11 COSB1417-COSB1470 were produced by the County. The first supplemental
12 response does not supplement any RPDs related to the video, thus it is omitted. None
13 of these responses reference a video taken by Sal.

14 13. In *L.C. et al. v. County of San Bernardino, et al.*, Case No. 5:22-cv-
15 00949-KK-SHK, County Defendants served their first set of Request for Production
16 of Documents on the Estate/L.C., I.H., and A.L through their guardians ad litem as
17 successors in interest on March 24, 2023. Plaintiffs responded on June 23, 2023. A
18 true and accurate copy of the requests and responses is attached hereto as Exhibit K.
19 None of these responses reference a video taken by Sal.

20 14. On November 7, 2024, Deputy Vaccari served his first set of
21 interrogatories on Plaintiffs L.C., I.H., A.L., and Ubaldo. These were the same
22 interrogatories served on each Plaintiff. Plaintiffs responded on December 9, 2024.
23 A true and accurate copy of the set of interrogatories served on Plaintiff L.C., which
24 is the same set served on the other plaintiffs, and their responses is attached hereto as
25 Exhibit L.

26 15. On December 11, 2024, County Defendants served a deposition notice
27 and subpoena for Betzabeth Gonzalez and Jacob Gonzalez, however, County
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1 Defendants could not find Jacob Gonzalez, even through use of a private investigator,
2 but they were able to serve and depose Betzabeth Gonzalez. A true and accurate copy
3 of the deposition notice and subpoena is attached hereto as Exhibit M.

4 16. On December 30, 2024, Betzabeth Gonzalez was deposed. A true and
5 accurate copy of excerpts from her deposition transcript is attached hereto as Exhibit
6 N.

7 17. On December 31, 2024, Plaintiff, for the first time, produced exhibits
8 PLTFS 0256-0258, video recordings from Betzabeth Gonzalez. A true and accurate
9 copy of the correspondence from Plaintiffs' counsel on December 31, 2024 producing
10 PLTFS 0256-0258 is attached hereto as Exhibit O.

11 I declare under penalty of perjury under the laws of the United States that the
12 foregoing is true and correct.

13 Executed this 13th day of January 2025 at Orange, California.

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15 By: /s/ Anita K. Clarke

16 **ANITA K. CLARKE**

17 Declarant
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